

REMARKS

Applicant has reviewed the Non-Final Office Action mailed on February 6, 2007, and the references cited therewith. This first reply is being filed within four months of the mailing date of the Non-Final Office Action.

Following the Examiner's issuing of a Final Office Action on September 12, 2006, Applicant filed an Amendment and Response to the Final Office Action on December 12, 2006. The Examiner then issued a Notice of Non-Compliant Amendment on January 4, 2007, relating to Applicant's inadvertent incorrect parenthetical labeling of claim 16 as "Previously presented" instead of "Currently amended" in the Amendment and Response file on December 12, 2006. Applicant filed a Supplemental Amendment and Response to the Final Office Action on January 12, 2007, correcting the parenthetical label of claim 16 to "Currently amended". Additionally on January 12, 2007, Applicant filed a Notice of Appeal in relation to the September 12, 2006, Final Office Action, and paid the required \$250 fee. In a Non-Final Office Action mailed February 6, 2007, the Examiner withdrew the "finality" of the September 12, 2006, Final Office Action, which was instead "replaced with the following non-final Office action", thus rendering the January 12, 2007, Notice of Appeal as moot. It is therefore assumed that the Examiner found the arguments presented in the Applicant's Amendment and Response filed January 12, 2007, as persuasive, since all previous rejections have now been dropped.

Claims 1, 11, 13, 14, 15, 24, 25, and 26 are amended. Claims 6-9 remain withdrawn. Claim 16 is cancelled. The amendments to claims 1, 11, 13, 14, 15, and 26 are supported by Figures 1, 2, 12, 17, 23, 30, 35, 36, 37, 38, and 39, and elsewhere in the original specification. Claim 24 has been amended to independent form including all of the limitations of the base claim 1, and claim 25 has been amended to be now dependent from claim 24. New 28 claim is added to further describe the claimed invention, and is supported by Figures 1, 2, 12, 17, 23, 30, 35, 36, 37, 38, and 39, and elsewhere in the original specification. No new matter is added. As a result, claims 1-5 and 10-28 are now pending in the present application. Please charge any additional claim fees, other required fees, or credit overpayment to Deposit Account number 502931.

Claim Rejections – USC § 112

Regarding Section 4 of the February 6, 2007, Office Action: Claims 19-22 were rejected by the Examiner under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses.

MPEP § 2181 (II) describes the written description necessary to support a claim limitation which invokes 35 U.S.C. § 112, sixth paragraph. In particular:

Whether a claim reciting an element in means- (or step-) plus-function language fails to comply with 35 U.S.C. 112, second paragraph, because the specification does not disclose adequate structure (or material or acts) for performing the recited function is closely related to the question of whether the specification meets the description requirement in 35 U.S.C. 112, first paragraph. See *In re Noll*, 545 F.2d 141, 149, 191 USPQ 721, 727 (CCPA 1976) (unless the means-plus-function language is itself unclear, a claim limitation written in means-plus- function language meets the definiteness requirement in 35 U.S.C. 112, second paragraph, so long as the specification meets the written description requirement in 35 U.S.C. 112, first paragraph). However, 35 U.S.C. 112, sixth paragraph, does not impose any requirements in addition to those imposed by 35 U.S.C. 112, first paragraph. See *In re Knowlton*, 481 F.2d 1357, 1366, 178 USPQ 486, 492-93 (CCPA 1973). Conversely, the invocation of 35 U.S.C. 112, sixth paragraph, does not exempt an applicant from compliance with 35 U.S.C. 112, first and second paragraphs. See *Donaldson*, 16 F.3d at 1195, 29 USPQ2d at 1850; *Knowlton*, 481 F.2d at 1366, 178 USPQ at 493.

Applicant respectfully submits that the written description and drawings of the original specification meet the requirements of 35 U.S.C. § 112, first paragraph, and the means-plus function claim language itself is not unclear, thus the means-plus-function claims 19-22 meet the

requirements of 35 U.S.C. § 112, second paragraph, for particularly pointing out and distinctly claiming the subject matter. Accordingly, reconsideration and withdrawal of the rejection and an early indication of allowance is respectfully requested.

Claim Rejections – USC § 102

Regarding Section 6 of the February 6, 2007, Office Action: Claims 1, 4-5, 19-22 and 26 were rejected by the Examiner under 35 U.S.C. § 102(b) as anticipated by Pohl (U.S. Patent No. 1,421,553; hereinafter “*Pohl*”). Applicant respectfully traverses.

Regarding claim 1, reference 14 in the *Pohl* figures is a larger opening, but is explicitly stated to be for regular or ordinary aiming – it is not for leading a target or compensation for motion, at all. (*See Pohl* page 1, lines 71-85.) The enclosed, multiple openings 15 and the single enclosed opening 17 do not provide two different sizes of openings, along a horizontal distance from the centerline of the gunbarrel, as recited in the present application claim 1, as amended. Therefore, all of the openings in *Pohl* for leading along a distance from the centerline of the gunbarrel are the same size (all openings 15), except opening 17, which is shown as both smaller and closer to the centerline of the gunbarrel than any of the openings 15. *Pohl* teaches the distance to the object is to the judgment of the marksman, and is not compensated for by using various sizes of openings. (*See Pohl* page 1, lines 20-25; page 1, line 112 through page 2, line 7; and page 2, lines 16-20.) In contrast, the present invention claim 1, as amended, recites a first plurality of sight indicators configured to aim the gunbarrel to compensate for motion of a target and a distance to the target, and wherein the second sight indicator is smaller than the first sight indicator and configured to be further from the centerline of the gunbarrel. Accordingly, reconsideration and withdrawal of the rejection and an early indication of allowance is respectfully requested.

Regarding claim 4, opening 17 of *Pohl* is configured to compensate for motion of a flying target. However, opening 14 is specifically denoted as being configured “so that sight may be taken along the ridge in the ordinary manner.” (*See Pohl* page 1, lines 71-85.) And thus, opening 14 is not for compensating for motion of target. Accordingly, claim 4, which recites “both … configured to compensate for motion of a flying target” are not met by *Pohl*’s single,

vertically oriented motion-compensating opening 17. Additionally, claim 4 is dependent from claim 1 and appears allowable for the reasons stated above that claim 1 appears allowable. Thus claim 4 appears in condition for allowance, and reconsideration and an early notice of allowance are respectfully requested.

Regarding claim 5, the *Pohl* patent refers to the line 4—4 as a horizontal section (an artifact of standard drafting protocol that indicates to the reader to refer to Figure 4, not a line that would be on the product as produced, *see Pohl* page 1, lines 40-41), and provides no description or suggestion that this is a substantially straight visible first line along the first direction ... configured to align with a direction of motion of a target. Additionally, claim 5 is dependent from claim 1 and appears allowable for the reasons stated above that claim 1 appears allowable. Thus claim 5 appears in condition for allowance, and reconsideration and an early notice of allowance are respectfully requested.

Regarding claim 19, and its dependent claims 20-22, these are means-plus-function claims for which the Examiner has not shown equivalent structures in *Pohl*. Further, Applicant respectfully submits that contrary to the Examiner's assertions, Applicant has set forth substantial, sufficient, and adequate disclosure in the specification, showing what is meant by the means-plus-function language of claim 19 "means on the gun sight for sighting a target through a substantially enclosed outline ... to compensate for a distance to the target and of a motion of the target" (e.g., the structure of figures 1, 2, 8, 10, 12, 17, 23, 30, 35, 36, 37, 38, 39 and 40). Once again, *Pohl* teaches the distance to the object is to the judgment of the marksman, and is not compensated for by using various sizes of openings. (*See Pohl* page 1, lines 20-25; page 1, line 112, through page 2, line 7; and page 2, lines 16-20.) Thus claim 19 and its dependent claims 20-22 appear in condition for allowance, and reconsideration and an early notice of allowance are respectfully requested.

Regarding claim 26, this is means-plus-function claims for which the Examiner has not shown equivalent structures in *Pohl*. Once again, *Pohl* teaches the distance to the object is to the judgment of the marksman, and is not compensated for by using various sizes of openings. (*See Pohl* page 1, lines 20-25; page 1, line 112 through page 2, line 7; and page 2, lines 16-20.) In contrast, the present invention claim 26, as amended, recites ... configured to provide two

different nonzero amounts of vertical lead and ... configured to provide two different nonzero amounts of horizontal lead. Accordingly, reconsideration and withdrawal of the rejection and an early indication of allowance is respectfully requested.

Claim Rejections – USC § 103

Regarding Section 8 of the February 6, 2007, Office Action: Claims 3, 11, and 13 were rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over *Pohl* in view of *King* (U.S. Patent No. 2,056,469; hereinafter “*King*”). Applicant respectfully traverses.

Regarding claims 3 and 11, the Examiner’s proposed a combination of *Pohl*, which does not have different-sized openings 15, and *King*, which has variable-spaced, non-enclosed pairs of indicators. Applicant respectfully submits no motivation is provided to either supplement or replace the equally-sized openings of *Pohl* with the non-enclosed and non-equally spaced pairs of indicators of *King*, and the resulting combination of *Pohl* modified by *King* does not result in the present claimed invention, unless the present application is impermissibly used to provide a different modifications than shown in either of those cited references of the prior art. Further, *Pohl* angles the side of openings at different angles, and this aspect of *Pohl* becomes nonfunctional when the Pohl diameter of the openings is enlarged, as proposed by the Examiner. Thus claims 3 and 13 appear in condition for allowance, and reconsideration and an early notice of allowance are respectfully requested.

Regarding claim 13, the Examiner’s proposed combination of *Pohl*, which does not have a plurality of variable-sized openings extending vertically and each configured to lead the target by a different amount, and *King*, which also does not have variable-spaced, non-enclosed pairs of indicators extending vertically, but that are spaced closer together (smaller) when further from the gunbarrel, would just as easily indicate pairs of equally sized openings with variable spacings (since the metal between the openings blocks the view of the target), unless the present application is impermissibly used to pick and choose which modifications of the prior art are to be made. *King* Figure 10 (which is used by *King* for different amounts of vertical lead) teaches away from this combination, with the smaller opening closer to the gunbarrel, in contrast to the

present claimed invention, as recited in claim 13. Thus claim 13 appears in condition for allowance, and reconsideration and an early notice of allowance are respectfully requested.

Regarding Section 9 of the February 6, 2007, Office Action: Claims 10, 12, 14, and 16-17 were rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over *Pohl* in view of *Castilla* (U.S. Patent No. 4,112,583; hereinafter “*Castilla*”). Applicant respectfully traverses.

Regarding claim 10, and its dependent claim 12, both depend from claim 1 and appear in condition for allowance for the reasons cited above for claim 1. Further, the indicators for different amounts of lead in both *Pohl* and *Castilla* do not vary in size with their distance from the centerline of the gun barrel. Still further, regarding claim 12, neither *Pohl* nor *Castilla* teach, describe or suggest a plurality of different size openings for different angles of lead extending vertically from the gunbarrel. Accordingly, claims 10 and 12 appear in condition for allowance, and reconsideration and an early notice of allowance are respectfully requested.

Regarding claims 14 and 17, these claims appear in condition for allowance for the reasons cited above for claim 1. Further, neither *Pohl* nor *Castilla* teach, describe or suggest a plurality of different size openings for different angles of lead to, compensate for a distance to the target, extending vertically from the gunbarrel. Accordingly, claims 14 and 17 appear in condition for allowance, and reconsideration and an early notice of allowance are respectfully requested.

Claim 16 has been cancelled.

Regarding claim 26, this claim has been amended to depend from allowable claim 24, and appears in condition for allowance for the reasons claim 24, as amended, is allowable. Thus claim 26 appears in condition for allowance, and reconsideration and an early notice of allowance are respectfully requested.

Regarding Section 10 of the February 6, 2007, Office Action: Claim 15 was rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over *Pohl* in view of *Castilla* as applied to claims 10, 12, 14, and 16-17, and further in view of *King*. Applicant respectfully traverses.

Claim 15 depends from dependent claim 14, and both depend from claim 1 and appear in condition for allowance for the reasons cited above for claim 1 and claim 14. Further, neither *Pohl, Castilla, King*, nor a combination thereof, teach, describe or suggest three different sized enclosed openings for different angles of lead extending vertically from the gunbarrel. Accordingly, claims 15 appears in condition for allowance, and reconsideration and an early notice of allowance are respectfully requested.

Allowable Subject Matter

Regarding Section 11 of the February 6, 2007, Office Action: Claims 2, 18, 23 and 27 have been allowed.

Regarding Section 11 of the February 6, 2007, Office Action: Claims 24 and 25 were determined allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Therefore, claim 24 has been amended to independent form including all of the limitations of the base claim 1, and claim 25 has been amended to be now dependent from claim 24. An early notice of allowance of these claims is respectfully requested.

New Claim

New 28 claim is added to further describe the claimed invention, and is supported by Figures 1, 2, 12, 17, 23, 30, 35, 36, 37, 38, and 39, and elsewhere in the original specification. Claim 28 depends from claim 3, and appears in condition for allowance for the reasons cited above for claim 3. Accordingly, claim 28 appears in condition for allowance, and reconsideration and an early notice of allowance are respectfully requested.

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 10/674,953

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Title: GUN SIGHT AND METHOD FOR HITTING A MOVING TARGET

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Attorney Docket: 1792.001US1

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney Charles A. Lemaire (952-278-3501) to facilitate prosecution of this application.

The number of independent and total claims has not changed. If necessary, please charge any additional fees or credit overpayment to Deposit Account Number 502931.

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CERTIFICATE UNDER 37 CFR 1.8(a)(1)(G)(C) (paragraph C being a new amendment to Section 1.8 published in the Federal Register, Vol. 72, No. 14, Tuesday, Jan. 23, 2007, page 2773): The undersigned hereby certifies that this document is being electronically filed via the U.S. Patent Office's EFS filing system on this **6th day of June, 2007, Central Time**, addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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